CRIMINAL LAW—HARMLESS ERROR IN ADMISSION OF EVIDENCE.—Defendant was tried and found guilty, on circumstantial evidence, of the murder of his wife by chloroform. The jury fixed his punishment at imprisonment for life. One of the witnesses was asked if she did not at one time say that the defendant, who was a doctor, had performed two abortions upon her. Upon her denial, a witness was called, who testified that she did say it. Another witness was allowed to testify that he prepared and sterilized for the defendant certain instruments fitted for use in producing an abortion; and that a lady came to defendant's office and left with him in a taxicab. On writ of error to the Supreme Court the conviction was affirmed. *People* v. *Cleminson* (Ill. 1911) 250 Ill. 135, 95 N. E. 157.

The doing of another criminal act, not a part of the issue, is not admissible except for the purpose of evidencing motive, etc., WIGMORE, EVIDENCE, § 192. The evidence as to the abortions was "palpably erroneous," as the court admitted. Was the error prejudicial? The general rule is that error is presumed to be prejudicial, *People* v. *Williams,* 18 Cal. 187. In the case of *People* v. *Montgomery,* 176 N. Y. 219, in which a husband was convicted of uxoricide, evidence of the unchastity of defendant's alleged paramour was admitted. The Appellate Court in that case said: "If therefore the sole question presented by this record were whether the verdict is supported by the weight of the evidence we could not reverse the judgment without invading the province of the jury, for there was competent evidence upon every branch of the case which raised a substantial issue of fact." The court further said the evidence of her unchastity "had a tendency to create a prejudice against the defendant and to injure him, without proving a single fact againt him," and held such error of a sufficiently substantial nature to call for a reversal of the case. *State* v. *Walker,* 124 Iowa 414, held that though there may be sufficient competent evidence to support a conviction, yet the defendant is entitled to a verdict free from any prejudice arising from a submission of improper evidence and the Appellate Court cannot say that the jury ignored that which was incompetent in arriving at a verdict. Yet the court in the principal case refused to follow this rule, saying: "After much deliberation, we have concluded that, as we cannot say that upon the competent evidence there might be a doubt as to defendant's guilt, we would not be justified in reversing the judgment on account of the errors committed." But assuming, as the Illinois court did in the principal case, that there was no doubt, in the court's opinion, as to defendant's guilt, yet should not the error have been held prejudicial? Even though it might be admitted that the jury would agree with the Supreme Court and find, without reference to the incompetent evidence, that the defendant was clearly guilty, yet could the court confidently assert that in the absence of the improper evidence the jury would nevertheless have fixed identically the same punishment? (In Illinois the jury have the power to fix the punishment in a murder case at death or at imprisonment for life or for a term of years determined by the jury). In *Farris* v. *People,* 129 Ill. 521, defendant was indicted for murder. Evidence that after the crime, defendant committed rape on the wife of deceased, was allowed to go to the jury. On writ of error the court said: "Proof of a distinct substantive crime

is never admissible unless there is some logical connection between the two, from which it can be said the one tends to establish the other" and held that there was none in this case. And the court further said: "It is suggested, and pressed by way of argument that although the trial court may have erred in allowing this proof, yet the case being so clearly made out by other evidence and the defense so utterly futile, the error should be held harmless. If the punishment for the crime of murder in this State was death, the point would be entitled to weight. If it was within the province of the court to assume that the jury would have inflicted the death penalty because the proof of guilt justified it, or if our decision was to affect this case alone, we might hesitate to order a reversal on this theory. * * * Every defendant on trial for that crime is entitled to the full benefit of that Statute. When all else has failed him, he has a right to stand before a jury, unprejudiced by incompetent evidence, and appeal to them to spare his life. It is impossible for us to know what they would have done but for the introduction of this incompetent evidence, much less is it our province to say what they should have done and no opinion is expressed on that subject. * * * We are required to settle a rule of evidence in criminal trials, not merely with reference to this case but in consideration of future consequences," and they reversed the judgment of the trial court. It is true that proof of rape is more apt to inflame and prejudice the mind of a jury than proof of abortion, but it goes without saying that it is only a matter of degree of prejudice, not that one has and the other has not an effect upon the jury. The decision in the principal case appears to overrule *Farris* v. *People, supra,* and to establish a new policy of Appellate Criminal Law in Illinois similar to that announced by the Criminal Court of Appeals of Oklahoma, in the case of *Byers* v. *Territory,* 24 Okla. 811, 103 Pac. 532, in which on an appeal from a conviction for murder the court refused to reverse the decision of the lower court saying: "The guilt of the defendant was the only rational conclusion at which the jury could arrive" and therefore the admission of the evidence objected to was harmless error.

EQUITY—SUBROGATION OF MORTGAGOR TO RIGHTS OF MORTGAGEE.—Plaintiff arranged to exchange certain lands for a stock of goods belonging to X who, needing money, asked plaintiff to procure a loan of $3,000 on the lands, and turn the money over to him. Plaintiff did so, giving his personal note and a trust deed to secure the loan. Plaintiff then conveyed the lands to X subject to the trust deed, and X reconveyed them to the defendant by a conveyance which contained no clause making the defendant personally liable for the debt, but did contain a clause showing that the conveyance was subject to the trust deed. For the purpose of protecting his interests, plaintiff subsequently paid the note and took an assignment of the trust deed, which he now seeks to foreclose, claiming that he is subrogated to the rights of the original grantee of the trust deed. *Held,* that defendant will not be heard in equity to oppose or defeat the right of the plaintiff, who has paid the debt, to be subrogated to the rights of the grantee in the trust deed. *Kay* v. *Castleberry* (Ark. 1911) 139 S. W. 645.

This case presents the rather novel question of whether the original grant-